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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 704

IRENE MORGAN,

Appellant,

vs.

COMMONWEALTH OF VIRGINIA.

BRIEF FOR APPELLANT

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No. 704

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COMMONWEALTH OF VIRGINIA.

BRIEF FOR APPELLANT

Opinion Below

The opinion of the Supreme Court of Appeals of Virginia appears in the record (R. 56-68) and is reported in 184 Va. 24, 34 S. E. (2d) 491.

Jurisdiction

The Supreme Court of the United States has jurisdiction to review this case on appeal under the provisions of Section 344 (a) and 861 (a) of Title 28 of the United States Code because the highest court of the State of Virginia has rendered final judgment in this suit sustaining the validity of a criminal statute of the State of Virginia after the validity of the statute had been drawn into question by the appellant prosecuted thereunder, on the ground of its being repugnant to the Constitution of the United States.

The date of the judgment of the Supreme Court of Appeals of Virginia which is now being reviewed was June 6, 1945 (R. 68). Appellant filed a timely Petition for Rehearing (R. 69), and this Petition was denied on September 4, 1945 (R. 69). Application for Appeal was duly presented on November 19, 1945 and allowed on the same day (R. 72). Probable jurisdiction was noted by this Court on January 28, 1946 (R. 76).

Summary Statement of Matter Involved

1. Statement of the Case

The appellant was tried in the Circuit Court of the County of Middlesex, Virginia, upon an amended warrant charging that on the 16th day of July, 1944, she did "unlawfully refuse and fail to obey the direction of the driver or operator of the Greyhound Bus Lines to change her seat and to move to the rear of the bus and occupy a seat provided for her, in violation of Section 5 of the Act, Michie Code of 1942, Section 4097dd"* (R. 27). She was found guilty by the trial judge sitting without a jury and on October 18, 1944, was sentenced to pay a fine of $10.00 (R. 54-55).

In the trial court, appellant duly raised and preserved by appropriate exceptions her objection that the statute in question is invalid because it is repugnant to the Constitution of the United States. Specifically by motion to strike the evidence of the Commonwealth (R. 39, 48), by motion to set aside the decision and arrest the judgment of guilt (R. 50-51), and by motion for a new trial (R. 52), appellant duly asserted her claim that the statute in question could not be made applicable to this case without violation of

* The statute is set out in full in the record (R. 7-9).

Section 8 of Article I of the Constitution of the United States, and that the conviction of appellant under the circumstances of this case constituted a violation of her rights under the Fourteenth Amendment of the Constitution of the United States.

On writ of error to the Supreme Court of Appeals of Virginia the assignment of errors again set forth appellant's claim that the statute under which she was convicted could not be applied to her without violating Article I, Section 8 of the Constitution of the United States (R. 1-2). The Supreme Court of Appeals of Virginia affirmed the judgment of the trial court and in its opinion considered and adjudicated the issues raised in favor of the validity of the statute in question as applied to appellant.

2. Statement of Facts

On July 16, 1944, appellant, who is a Negro, was a passenger on a bus of the Richmond Greyhound Lines, Inc., traveling from Hayes Store in Gloucester County, Virginia, to Baltimore, Maryland (R. 31, 40), on a through ticket purchased by her from said company (R. 33, 34, 40). The bus was traveling on a continuous and through trip from Norfolk, Virginia, to Baltimore, Maryland, via Washington, D. C. (R. 32-33). During this journey, at Saluda, Virginia, the driver of the bus, a regular employee of the bus company in charge and control of the bus, directed appellant to move from the seat which she was occupying (in front of the rear seat) to the rear of the bus pursuant to a design to enforce the segregation of white and colored passengers in accordance with the requirement of the Virginia segregation law and particularly Section 4097dd of Michie's Code of Virginia (R. 31, 32, 40-41). Appellant refused to move, whereupon the driver procured a warrant and caused her

to be arrested upon a charge of violating the above statute. There is no dispute concerning the above facts.

3. The Applicable Statute and Its Construction

In 1930, the General Assembly of Virginia enacted a statute described by its title as "An Act to provide for the separation of white and colored passengers in passenger motor vehicle carriers within the State; to constitute the drivers of said motor vehicles special policemen, with the same powers given to conductors and motormen of electric railways by general law." (Acts of Assembly, 1930, Chap. 128, pages 343-344.)

This statute, now appearing as Sections 4097z to 4097dd of Michie's Code of Virginia, 1942, requires all passenger motor vehicle carriers to separate the white and colored passengers in their motor busses, and to set apart and designate in each bus seats or portions thereof to be occupied, respectively, by the races, and constitutes the failure or refusal to comply with said provisions a misdemeanor (Sec. 4097z); forbids the making of any difference or discrimination in the quality or convenience of the accommodations so provided (Sec. 4097aa); confers the right and obligation upon the driver, operator or other persons in charge of such vehicle, to change the designation of seats so as to increase or decrease the amount of space or seats set apart for either race at any time when the same may be necessary or proper for the comfort or convenience of passengers so to do; forbids the occupancy of contiguous seats on the same bench by white and colored passengers at the same time; authorizes the driver or other person in charge of the vehicle to require any passenger to change his or her seat as it may be necessary or proper, and constitutes the failure or refusal of the driver, operator or other person in charge of the vehicle to carry out these provisions a mi-

demeanor (Sec. 4097dd); constitutes each driver operator or other person in charge of the vehicle a special policeman, with all of the powers of a conservator of the peace in the enforcement of the provisions of this statute, the maintenance of order upon the vehicle and while in pursuit of persons for disorder upon said vehicle, for violating the provisions of the act, and until such persons as may be arrested by him shall have been placed in confinement or delivered over to the custody of some other conservator of the peace or police officer, and protects him against the consequences of error in judgment as to the passenger's race, where he acts in good faith and the passenger has failed to disclose his or her race (Sec. 4097cc).

Section 4097dd upon which the prosecution in this case was based, provides that all persons who fail to take seats assigned to them by the driver or other person assigned to take up tickets or who fail to obey the directive of the driver to change seats pursuant to rules and regulations of the company designed to accomplish the segregation of the races as required by the statute, having been first advised of the rule or regulation, shall be guilty of a misdemeanor; it is also provided that such person may be ejected from the bus by any driver or other conservator of the peace without return of fare paid, and neither the driver nor the bus company shall be liable for damages for such ejection. The statute is set out in full in Appendix A to this brief.

The Supreme Court of Appeals of Virginia in affirming the conviction of appellant decided that the statute in question applied to both interstate and intrastate passengers (R. 56, 68). The statute involved requires all motor vehicles to segregate passengers according to race regardless of the effect upon interstate commerce or hardship to carrier and passenger.

Carriers of passengers are precluded by this statute from exercising judgment or discretion in seating arrangements. The rules and regulations of the carrier involved were required by the statutes of Virginia. The lower court in its opinion, expressly stated: "The statute, when read in its entirety, clearly demonstrates that no power is delegated to the carrier to legislate and determine what conduct shall be considered a crime. The statute simply describes conditions which must first be found to exist before it becomes applicable. There is no uncertainty about the conditions that must exist before the offense is complete. *The statute itself condemns the defendant's conduct as a violation of law and not the rule of the carrier*" (R. 67). (Italics ours.)

In this view of the case it is understandable that the appellee made no effort to justify the rules and regulations of the bus company on the basis of reasonableness or necessity other than the requirements of the statutes of Virginia. For all intents and purposes this case stands as if the rules and regulations adopted pursuant to the statute became a part of the statute itself.

Errors Relied Upon

I

The Supreme Court of Appeals of Virginia erred in rendering judgment affirming the judgment of the Circuit Court of the County of Middlesex, Virginia, holding that the statute of the State of Virginia, known as Chapter 128, Acts of Assembly of 1930, pages 343-344, as applied to appellant, a passenger traveling on an interstate journey in a vehicle moving in interstate commerce, is not repugnant to the provisions of Clause 3 of Section 8 of Article I of the Constitution of the United States.

II

The Supreme Court of Appeals of Virginia erred in rendering judgment affirming the judgment of the Circuit Court of the County of Middlesex, Virginia, holding that the powers reserved to the States under the Tenth Amendment of the Constitution of the United States include the power to enforce a state statute compelling the racial segregation of passengers on public carriers against a person traveling on an interstate journey in a vehicle moving in interstate commerce.

Summary of Argument

For seventy years the decisions and pronouncements of this Court have consistently condemned state statutes attempting to control or require the segregation of Negro passengers moving in interstate commerce on public carriers as unconstitutional invasions of an area where national power under the commerce clause is exclusive. Unless the reasoning of those cases was or is unsound, they should be followed.

The nature of the subject matter, the direct impact of segregation statutes on the interstate movement of persons in commerce, and the burdensome and disruptive effect of numerous and conflicting local enactments in this field all indicate the correctness of the doctrine which places this aspect of interstate commerce beyond state control. The transitory status of the interstate passenger and the lack of any uniform or consistent coverage of Negro travelers in the segregation laws of the several states, including Virginia, show the unsubstantial character of the State's claim of legitimate concern with this matter. Such capricious application of provincial notions beyond substantial local needs affords no valid basis for the regulation of interstate commerce which Virginia is attempting.

ARGUMENT

I

This Court Has Consistently Asserted That States Do Not Possess the Authority Which Virginia Now Asserts

That a state statute seeking to impose a local policy concerning racial segregation upon the interstate transportation of passengers on public carriers contravenes the commerce clause was clearly and decisively established by this Court in *Hall* v. *DeCuir*.[1] The state statute there challenged was construed as guaranteeing to passengers in interstate commerce equal rights and privileges in all parts of public conveyances without discrimination on account of race or color. This Court concluded that state regulation of this subject matter was inconsistent with the commerce clause. Great emphasis was placed upon the burdensome effect of diverse regulations in states with conflicting notions of racial policy.

The considerations which determined the invalidity of the statute in *Hall* v. *DeCuir* operate equally to render invalid legislation which seeks to compel a separation of interstate passengers upon a racial basis. It was the very fact that one state may attempt to segregate interstate passengers in some fashion while an adjoining state may prohibit such segregation which compelled the Court to declare this entire subject matter beyond the reach of local law.

Analysis of the cases which have brought various aspects of racial segregation in commerce before this Court since

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[1] 95 U. S. 485.

Hall v. *DeCuir* reveals consistent recognition and application of the doctrine of that case. *Louisville, N. O. & T. Ry. Co.* v. *Mississippi*,[2] involved the 1888 statute of Mississippi which required railroads operating within the state to provide separate but equal accommodations for white and colored passengers. The Supreme Court of Mississippi had construed the statute as applying only to intrastate commerce. This Court discussed and reasserted the principle of *Hall* v. *DeCuir* and made it plain that, had the statute before it been held applicable to interstate commerce, it would have been invalid.

The 1890 Louisiana statute, requiring separate but equal accommodations for the white and colored races on railroads, was in question in *Plessy* v. *Ferguson*.[3] The state court had limited the operation of the law to intrastate commerce, and the argument centered around constitutional provisions other than the commerce clause. The Court discussed *Hall* v. *DeCuir*, and pointed out that in the latter case the vice of the statute was that it affected interstate commerce, thus indicating that the decision in the *Plessy* case would have been different had the statute involved extended to interstate passengers.

In more recent cases concerning segregation in transportation, *Chesapeake & O. Ry. Co.* v. *Kentucky*,[4] *Chiles* v. *Chesapeake & Ohio Ry. Co.*,[5] and *McCabe* v. *Atchison, Topeka and Santa Fe Ry. Co.*,[6] this Court discussed *Hall* v. *DeCuir* and reaffirmed and restated with approval the reasoning of that case.

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[2] 133 U. S. 587.
[3] 163 U. S. 537.
[4] 179 U. S. 388.
[5] 218 U. S. 71.
[6] 235 U. S. 151.

In *South Covington & C. St. Ry. Co.* v. *Kentucky*,[7] defendant, a Kentucky corporation, had been authorized by its charter to operate a street railway in and around Covington, Kentucky, and to acquire and operate any other street railway in that vicinity which included the City of Cincinnati, Ohio. Defendant became the owner of all of the stock of another Kentucky corporation, herein designated as the "C" Company, authorized to construct and maintain an electric railroad between Covington and Erlanger, Kentucky, and beyond. Both companies were operated under the same management and under the "C" Company's name. A fare of five cents was charged for passage upon any point on the road of the "C" Company to any point on the system of the defendant, and transfers were given for all connecting lines. Many persons taking passage on the line of the "C" Company in Kentucky were transported without change of cars into Cincinnati over defendant's line. Each terminus, as well as each of the stations, of the "C" Company, was in Kentucky. Defendant was indicted and convicted for failure to comply with the Kentucky statute requiring separate but equal accommodations for the races, in a car which operated out of Cincinnati but continued through and beyond Covington, with its Kentucky run over the "C" Company route. The defense was that the principal business of defendant was interstate in character, and that the statute could not validly apply to it. However, the Court of Appeals of Kentucky held that the defendant's operation over the line of the "C" Company was a distinct enterprise within Kentucky to which Kentucky law applied, pointing out at the same time that the statute had no application to the transportation of interstate passengers,[8] and on this basis affirmed the conviction. This Court made a

[7] 252 U. S. 399.
[8] 181 Ky. 449, 205 S. W. 603.

similar analysis of the situation and affirmed the judgment. In the majority opinion it was made plain that the Justices regarded the subject matter upon which the statute operated as intrastate rather than interstate commerce.[9] Mr. Justice DAY, writing for the three dissenting Justices, pointed out explicitly that

> "It is admitted that this regulation would not apply to interstate passengers, and colored passengers going from Kentucky to Cincinnati, or going from Cincinnati to Kentucky on a through trip would not be subject to the regulation."[10]

Not only has *Hall* v. *DeCuir* been approved upon those occasions where this Court has been faced with state laws concerning racial segregation of passengers, but the decision has frequently been relied upon *arguendo* in cases wherein some analogical application of doctrine seemed appropriate with respect to other types of state legislation.[11] Most recently, in *Southern Pacific Co.* v. *Arizona*,[12] decided June 18, 1945, this Court stated that "the commerce clause has been held to invalidate local 'police power' enactments—regulating the segregation of colored passengers in interstate trains, *Hall* v. *DeCuir*."

The decisions of other courts likewise reflect substantial agreement that state laws of the kind involved in the in-

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[9] 252 U. S. at 403, 404.

[10] 252 U. S. at 407.

[11] *Missouri* v. *Kansas Natural Gas Co.*, 265 U. S. 298, 310; *South Covington & C. St. Ry. Co.* v. *Covington*, 235 U. S. 537, 548; *Minnesota Rate Cases*, 230 U. S. 352, 401; *Hanley* v. *Kansas City Southern Ry. Co.*, 187 U. S. 617, 620; *Louisville & N. R. Co.* v. *Eubank*, 184 U. S. 27, 40; *Cleveland, C. C. & St. L. Ry. Co.* v. *Illinois*, 177 U. S. 514, 518; *Rhodes* v. *Iowa*, 170 U. S. 412, 424; *Covington & C. Bridge Co.* v. *Kentucky*, 154 U. S. 204, 215; *Bowman* v. *Chicago & N. W. R. Co.*, 125 U. S. 465, 486; *Western Union Tel. Co.* v. *Pendleton*, 122 U. S. 347, 357; *Wabash, St. L. & P. Ry. Co.* v. *Illinois*, 118 U. S. 557, 565.

[12] 325 U. S. 761.

stant case cannot constitutionally be applied to passengers traveling in interstate commerce. This conclusion has been reached in all of the inferior federal courts which have considered the matter,[13] and in a majority of the state courts as well.[14] Analysis of these cases reveals consistency in recognition of the basic considerations underlying the decision in *Hall* v. *DeCuir*, that the national interest in the freedom of interstate commerce from diverse and conflicting requirements as to rearrangement of passengers must prevail over local notions of racial policy.

The rationale of this entire line of decisions is so clearly spelled out in *Hart* v. *State*, that quotation from that opinion seems appropriate:

> "Although the state has power to adopt reasonable police regulations to secure the safety and comfort of passengers on interstate trains while within its borders, it is well settled, as we have seen, that it can do nothing which will directly burden or impede the interstate traffic of the carrier, or impair the usefulness of its facilities for such traffic. When the subject is national in its character and admits and requires uniformity of regulation affecting alike all the states, the power is in its nature exclusive, and the state cannot act. The failure of Congress to act as to matters of national character is, as a rule, equivalent to a declaration that they shall be free from regulation or restriction by any statutory enactment, and it is well settled that interstate com-

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[13] *Washington, B. & A. Ry.* v. *Waller*, 53 App. D. C. 200, 289 Fed. 598; *Tompkins* v. *Missouri, K. & T. Ry.*, 211 Fed. 391 (C. C. A. 8th); *Anderson* v. *Louisville & N. R. Co.*, 62 Fed. 46 (C. C. Ky.); *Brown* v. *Memphis & C. R. Co.*, 5 Fed. 499 (C. C. Tenn.).

[14] *State ex rel. Abbott* v. *Hicks*, 44 La. Ann. 770, 11 So. 74; *Hart* v. *State*, 100 Md. 595, 60 Atl. 457; *Carey* v. *Spencer*, 36 N. Y. Supp. 886; *State* v. *Galveston H. & S. A. Ry. Co.* (Tex. Civ. App.), 184 S. W. 227; *Huff* v. *Norfolk-Southern R. Co.*, 171 N. C. 203, 88 S. E. 344. Contra: *Illinois Central R. Co.* v. *Redmond*, 119 Miss. 765, 81 So. 115; *Smith* v. *State*, 100 Tenn. 494, 46 S. W. 566.

merce is national in its character. Applying these general rules to the particular facts in this case, and bearing in mind the application of the expressions used in *Hall* v. *DeCuir* to cases involving questions more or less analogous to that before us, we are forced to the conclusion that this statute cannot be sustained to the extent of making interstate passengers amenable to its provisions. When a passenger enters a car in New York under a contract with a carrier to be carried through to the District of Columbia, if when he reaches the Maryland line, he must leave that car, and go into another, regardless of the weather, the hour of the day or the night, or the condition of his health, it certainly would, in many instances, be a great inconvenience and possible hardship. It might be that he was the only person of his color on the train, and no other would get on in the State of Maryland, but he, if the law is valid against him, must, as soon as he reaches the state line, leave the car he started in, and go into another, which must be furnished for him, or subject himself to a criminal punishment. Or take, for illustration, the Cumberland Valley Railroad from Winchester, Va., to Harrisburg, Pa. In Virginia a law of this kind is in force, while in West Virginia and Pennsylvania there is none, as far as we are aware. On a train starting from Winchester the passengers must be separated according to their color for six or eight miles, when it reaches the West Virginia line, then through West Virginia they can mingle again until they reach the Potomac, when they would be again separated, and so continue until they reach Mason and Dixon's line, when they are again permitted to occupy cars without regard to their color. If the railroad company did not deem it desirable or proper to have separate compartments throughout the journey—and oftentimes it might be wholly unnecessary for the comfort of the passengers on said trains, as there might be very few colored persons on them—there would be at least three

changes in that short distance. We cannot say, therefore, that, as applied to interstate passengers, such a law as this would be so free from the objections pointed out in the cases above mentioned as to be sustained under the police powers of the states."[15]

The Commonwealth of Virginia is now asserting that the decision in *Hall* v. *DeCuir* and the impressive line of decisions and pronouncements following that case for seventy years and as recently as June, 1945, were ill considered.

II

Regulations Concerning Racial Segregation in Interstate Commerce Fall Within the Area of Exclusive National Power as Judicially Defined

Underlying *Hall* v. *DeCuir* and the cases which follow it is the conception that the free movement of persons in interstate commerce may not be obstructed or interfered with by state legislation predicated upon provincial notions of social policy. It was the very design and object of the commerce power "to prevent unjust and invidious distinctions, which local jealousies or local and partial interests might be disposed to introduce and maintain."[16] This is sound doctrine consistent with judicial exposition and analysis of the commerce power as developed over more than a century.

From *Gibbons* v. *Ogden*[17] in 1824 to *Southern Pacific Co.* v. *Arizona*[18] in 1945, this Court has made it clear that

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[15] 100 Md. at 612-613, 60 Atl. at 462-3.
[16] See *Veazie* v. *Moor*, 14 How 568, 574.
[17] 9 Wheat. 1.
[18] 325 U. S. 761.

an obvious and basic purpose of the commerce clause is to prevent the interruption or disruption of the actual movement of persons and property across state lines by local obstacles and impediments. Except where the local imposition is a reasonable corrective of a clear and substantial hazard to the local community created by the interstate movement itself,[19] this Court has consistently disapproved such local interference.[20] The language of the court in *Kelly* v. *Washington* is apposite and reflects a point of view which characterizes the decisions:

> "In such a matter [insuring the safety of tugboats] the State may protect its people * * *. If, however, the State goes further and attempts to impose particular standards as to structure, design, equipment and operation which in the judgment of its authorities may be desirable but pass beyond what is plainly essential to safety and seaworthiness, the State will encounter the principle that such requirements, if imposed at all, must be through the action of Congress which can establish a uniform rule."[21]

In this connection, it seems important to note that while this Court on occasion has questioned certain of its own earlier distinctions between direct and indirect impositions upon commerce, the fact that exercise of control over inter-

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[19] E. G.: *South Carolina Highway Dept.* v. *Barnwell Bros., Inc.*, 303 U. S. 177; *Erie R. R.* v. *Public Utility Commissioners*, 254 U. S. 394; *Morgan's L. & T. R. R. & Steamship Co.* v. *Louisiana*, 118 U. S. 455.

[20] *Buck* v. *Kuykendall*, 267 U. S. 307; *Pennsylvania* v. *West Virginia*, 262 U. S. 553; *Chicago B. & Q. R. Co.* v. *Railroad Commission of Wisconsin*, 237 U. S. 220; *Bowman* v. *Chicago & N. W. R. Co.*, 125 U. S. 465; *South Covington & C. St. Ry. Co.* v. *Covington*, 235 U. S. 537; *Wabash St. L. & P. Ry. Co.* v. *Illinois*, 118 U. S. 557.

[21] 302 U. S. 1.

state commerce is the very purpose and object of a questioned state statute and that its enforcement is achieved by interference with interstate movement itself, militate strongly against the validity of the statute. This is because such impact necessarily involves some invasion of the national interest in maintaining the freedom of commerce across state lines. If this fact alone is not conclusive, it at least suffices to establish the impropriety of the state regulation until and unless it is shown that urgent considerations of local welfare take a particular case out of the general rule.[22]

This aspect of the present case is especially noteworthy. Not only does the statute require a particular arrangement or rearrangement of interstate passengers while traveling through Virginia, but it accomplishes this result by a criminal sanction, the invocation of which completely interrupts the interstate movement and brings about the seizure and incarceration of the person who insists upon the peaceful and uninterrupted progress of his interstate journey. Thus the very analysis of the incidence and effect of the statute reveals so direct and serious an imposition upon interstate travel as to place upon the State an extremely heavy burden of justification which it is submitted the State has not met and cannot meet.

Beyond the foregoing considerations, the free movement of citizens of the United States throughout the nation is a

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[22] For such approach and analysis see *Pennsylvania* v. *West Virginia*, 262 U. S. 553, particularly at 596-7. In *Di Santo* v. *Pennsylvania*, 273 U. S. 34, it is believed that the divergence of majority and dissenting opinions is essentially whether the at least *prima facie* case of invalidity arising from the direct impact of the regulation on interstate commerce may be rebutted by a showing that there is grave local need for such regulation.

matter of special concern to the national sovereign. The privileges and immunities clause of the 14th amendment elevates this right of free movement to the dignity of a constitutional guaranty.[23] Where a subject matter is of such primary national concern, its involvement in a particular local interference with commerce makes it doubly imperative that national authority over this aspect of commerce be held exclusive. While the majority opinion in *Edwards* v. *California* did not allude to the constitutional privilege and immunity of free travel under the Fourteenth Amendment, it is believed that the incidence of the statute upon conduct in the area of this privilege is a fundamental consideration leading to the result reached in that case and a like result here.

A. State Statutes in This Field Are So Numerous and Diverse That Their Imposition on Interstate Commerce Would Be an Intolerable Burden

The impact of the present statute should properly be considered in the light of the cumulative effect of similar statutes in Virginia and elsewhere upon interstate passenger travel. The Supreme Court of Appeals of Virginia properly and correctly pointed out in its opinion in the present case that not only motor vehicles but other public carriers and the passengers thereon passing through the State are affected by similar statutory requirements of racial segregation:

> "The public policy of the Commonwealth of Virginia, as expressed in the various legislative Acts, is

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[23] *Crandall* v. *Nevada*, 6 Wall. 35; cf concurring opinion in *Edwards* v. *California*, 314 U. S. 160, 177.

and has been since 1900 to separate the white and Negro races on public carriers. As to railroads, see Acts of 1906, pages 236 and 237, carried in Michie's Code of 1942 as secs. 3962-3968; as to steamboats, see Acts of 1900, page 340, carried in Michie's Code 1942 as secs. 4022-4025; as to electric or street cars, see Acts of 1902-03-04, page 990, carried in Michie's Code 1942 as secs. 3978-3983, and as to motor vehicles see Acts of 1930, pages 343 and 344, carried in Michie's Code of 1942 as secs. 4097z, 4097aa, 4097bb, 4097cc, and 4097dd." (R. 60).

It is believed that this Court will take judicial notice of the fact that the State of Virginia extending from the Atlantic Ocean to the western mountain barrier of the Atlantic coastal plain is so located geographically as to require the entire body of north and south travel along the populous eastern seaboard to pass through that State. It is also to be noticed that all persons traveling south and southwest from the National Capital or traveling to the Capital from those directions must pass through Virginia. Thus a very substantial proportion of interstate passenger travel in America is necessarily affected by the attempted exercise of local policy which is here challenged.

Moreover, the variety and contrariety of policies and enactments of the several states with reference to segregation or non-segregation, as well as the variety and uncertainty of local rules determining the race of an individual make it clear that the burden imposed upon and the confusion introduced into interstate travel by the enforcement of multitudinous and uncertain regulations in the course of a single journey are tremendous.

Legislation affecting these questions is widespread and diverse in language and construction and the subject of

frequent change. Eighteen states have adopted so-called "Civil Rights Acts" prohibiting segregation on account of race or color against persons using certain public facilities, including public carriers.[24] On the other hand, other states have enacted laws requiring the segregation of races upon railroad trains,[25] street cars,[26] mofor vehicle car-

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[24] Cal. Civ. Code (Deering), 1941, Sec. 51-54; Colo. Stats., 1935 Ch. 35, Sec. 1-10; Conn. Gen. Stat. (Supp. 1933) Sec. 1160b; Ill. Rev. Stat., 1941, Ch. 38, Sec. 125-128g; Ind. Stat. (Burns), 1933, Sec. 10-901, 10-902; Iowa Code, 1939, Sec. 13251-13252; Kan. Gen. Stat., 1935, Sec. 21-2424; Mass. Laws (Michie), 1933, Chap. 272, Sec. 98, as amended 1934; Mich. Comp. Laws (Supp. 1933), Sec. 17, 115-146 to 147; Minn. Stat. (Mason), 1927, Sec. 7321. Neb. Comp. Stat., 1929, Ch. 23, Art. 1; N. J. Rev. Stat., 1937, Sec. 10:1-1 to 10:1-9; N. Y. Laws (Thompson), 1937, (1942, 1943, 1944 Supp.), Ch. 6, Sec. 40-42; Ohio Code (Throckmorton), 1933, Sec. 12940-12941; Pa. Stat. (Purdon), Tit. 18, Sec. 1211, 4653 to 4655; R. I. Gen. Laws, 1938, Ch. 606, Sec. 27-28, Ch. 612, Sec. 47-48; Wash. Rev. Stat. (Remington), 1932, Sec. 2686; Wis. Stat., 1941, Sec. 340.75. See also Me. Rev. Stat., 1930, Ch. 134, Sec. 7-10; N. H. Rev. Laws, 1942, Ch. 208, Sec. 3-4, 6.

[25] Ala. Code, 1940, Tit. 48, Sec. 196-197; Ark. Stat., 1937 (Pope), Sec. 1190-1201; Fla. Stat., 1941, Sec. 352.03-352-06; Ga. Code, 1933, Sec. 18-206 to 18-210, 18-9901 to 18-9906; Ky. Rev. Stat. (Baldwin), 1942, Sec. 276.440; La. Gen. Stat. (Dart), 1939, Sec. 8130-8132; Md. Code (Flack), 1939, Art. 27, Sec. 510-516; Miss. Code, 1942, Sec. 7784; N. C. Gen. Stat., 1943, Secs. 60-94 to 60-97; 13 Okla. St. Ann. 181-190; S. C. Code, 1942, Sec. 8396 to 8400-2; Tenn. Code (Michie), 1938, Sec. 5518-5520; Tex. Rev. Civ. Stat. (Vernon), 1936, Art. 6417; Tex. Pen. Code (Vernon), 1936, Art. 1659-1660; Va. Code (Michie), 1942, Sec. 3962-3968.

[26] Ark. Stat., 1937 (Pope), Sec. 1202-1207; Fla. Stat., 1941, Sec. 352.07-352.15; Ga. Code, 1933, Sec. 18-206 to 18-210, construed to include street railways; La. Gen. Stat. (Dart), 1939, Sec. 8188-8189; Miss. Code, 1942, Sec. 7785; N. C. Gen. Stat., 1943, Sec. 60-135 to 60-137; 13 Okla. Stat. 181-190; S. C. Code, 1942, Sec. 8490-8498; Tenn. Code (Michie), 1938, Sec. 5527-5532; Tex. Rev. Civil Stat. (Vernon), 1936, Art. 6417; Tex. Penal Code (Vernon), 1936, Art. 1659-1660; Va. Code, 1942, Sec. 3978-3983.

riers [27] and steamboats.[28] If all these laws can validly be applied to interstate commerce, the very prophesy in *Hall* v. *DeCuir* becomes a realty.

Furthermore, there is no uniformity even as respects the applicability of the several existing segregation laws to interstate transportation. Before the Virginia decision in the instant case, only two states, Tennessee and Mississippi, had held that their laws could affect interstate travelers; elsewhere they had been construed, in appropriate cases, as limited in their operation to passengers in intrastate commerce. Assuming a trip from the District of Columbia to Louisiana through Virginia, Kentucky, Tennessee, Alabama, and Mississippi, within the District of Columbia all passengers have the free run of the vehicle. But when Virginia is entered, passengers must move to comply with the statute under consideration. As soon, however, as Kentucky is reached, the interstate passenger regains his power of choice as to seats.[29] When the vehicle

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[27] Ala. Code, 1940, Tit. 48, Sec. 268; Ark. Stat., 1937 (Pope), Sec. 6921-6927, Laws 1943, p. 379; Fla. Stat., 1941, Sec. 352.03-352.08; Ga. Code, 1933, Sec. 68-616; La. Gen. Stat. (Dart), 1939, Sec. 5307-5309; Miss. Code, 1942, Sec. 7785; N. C. Gen. Stat. 1943, Sec. 62-109; 47 Okla. Stat. Ann., 201-210; S. C. Code, 1942, Sec. 8530 (1); Tex. Rev. Civ. Stat. (Vernon) 1936, Art. 6417; Tex. Pen. Code (Vernon) 1936, Art. 1661.1; Va. Code, 1942, Sec. 4097z-4097dd.

[28] Md. Code (Flack), 1939, Art. 27, Sec. 517-520; N. C. Gen. Stat., 1943, Sec. 60-94 to 60-97; S. C. Code, 1942, Sec. 8396; Va. Code, 1942, Sec. 4022-4026.

[29] The Kentucky statutes have consistently been construed as limited in operation to intrastate passengers. *South Covington & C. St. Ry. Co.* v. *Commonwealth*, 181 Ky. 449, 205 S. W. 603; *Chiles* v. *Chesapeake & O. Ry. Co.*, 125 Ky. 299, 101 S. W. 386; *Ohio Valley Ry.'s Receiver* v. *Lander*, 104 Ky. 431, 47 S. W. 344; *Chesapeake & O. Ry. Co.* v. *State*, 21 Ky. L. 228, 51 S. W. 160.

passes into Tennessee, the interstate passenger is again segregated.[30] When the vehicle crosses the line into Alabama, he is not subject to the segregation statute in Alabama which expressly excepts from its interdictions passengers in interstate commerce who started their journey in jurisdictions not having segregation statutes.[31] In Mississippi, segregation is again invoked, but entering into Louisiana the local segregation statute is once more inapplicable. The consequence of these numerous shifts, of the precedent arrangements which must be made to bring them about, and the administration of the details in accomplishing them, cannot be otherwise than burdensome to the national commerce and those engaged therein. It is also to be noted that the mechanics of segregation may differ greatly among the states requiring it.

There is no uniformity as to the type of transportation affected by the regulations of the individual states. Virginia and three other jurisdictions except express trains;[32] two except narrow gauge and branch lines;[33] one excepts relief trains;[34] one excepts excursion trains;[35] one permits special trains for the members of either race where regular

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[30] The Tennessee statute was construed to apply to interstate passengers in *Smith* v. *State*, 100 Tenn. 494, 46 S. W. 566.

[31] Ala. Code, 1940, Title 48, Sec. 197.

[32] Md. Code (Flack), 1939, Art. 27, Sec. 516; N. C. Gen. Stat., 1943, Sec. 60-94; S. C. Code (1932) Sec. 8399; Va. Code Ann. (Michie, 1930), Sec. 3968.

[33] N. C. Gen. Stat., 1943, Sec. 60-95, (consent of Utilities Commission necessary); S. C. Code (1932) Sec. 8399.

[34] N. C. Gen. Stat., 1943, Sec. 60-94.

[35] Tex. Ann. Rev. Civ. State. (Vernon, 1925) Art. 6417, Tex. Ann. Pen. Code (Vernon, 1925) Art. 1660.

schedules are not interfered with;[36] and Virginia and seven other states except freight trains and cabooses.[37]

Unlike the antithetical Civil Rights Acts, segregation laws require, as a condition to their operation, a division of peoples upon a basis of race and, as a necessary concomitant thereof, a means whereby the division may be accomplished. Dissimilarity in definition of the persons to be affected by the law produces in turn a geographical dissimilarity in the operation of the several laws to the extent that carrier and passenger alike are seriously burdened, confused and embarrassed. An examination of the law of the states where legislative or judicial efforts in this direction have been made reveals that there is much diversity and conflict in the rules governing the proportion of "Negro blood" necessary to classify a person as a "Negro" or "colored person".[38]

The terms "colored person" and "Negro" have been variously defined as including all persons in whom there is

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[36] 13 Okla. Stat. Ann. 189.

[37] Ark. Stat., 1937 (Pope), Sec. 1201; Ky. Stat. Ann. (Carroll, 1930) Sec. 801; Md. Code (Flack), 1939, Art. 27, Sec. 516; 13 Okla. Stat. Ann. 187; S. C. Code (1932) Sec. 8399 (applies to freights with one passenger coach attached for local travel); Tenn. Code (Michie), 1938, Sec. 5518 (if passenger coach is carried, the races must be separated); Tex. Rev. Civ. Stat. (Vernon, 1936) Art. 6417, Tex. Pen. Code (Vernon, 1936) Art. 1660; Va. Code Ann. (Michie, 1930) Sec. 3968. In North Carolina the Utilities Commission may allow certain lines that run mixed trains to disregard the statute because of the small number of Negro passengers. N. C. Gen. Stat. 1943, Sec. 60-95.

[38] Some states have defined the terms by a general statute. Others have defined them only with respect to particular subjects. In some states, the definition varies according to the subject under consideration, so that a person may be classified as a colored person or Negro for one purpose and as a white person for another. In states where no statutory definition has been attempted, the courts are faced with the difficulty of deciding the query as best they can.

ascertainable any quantum of "Negro blood" whatever,[39] or all persons of Negro or African descent,[40] or only those persons who are of "Negro blood" to the third generation inclusive,[41] or the fourth generation inclusive,[42] or who have one-fourth [43] or one-eighth [44] or more "Negro blood". The range is so great that the same person making an interstate trip may be a Negro or colored person in one state through which he passes and a white person in another and consequently may find himself faced with a criminal prosecution because of a noncompliance with local laws necessitating a change of accommodations to conform to his changing legal status.

Moreover, the definitions within the same state are frequently conflicting. Aside from those states which have a

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[39] Ala. Code, 1940, Tit. 1, Sec. 2 and Title 14, Sec. 360; Ark. Stat. (Pope), 1937, Sec. 3290 (concubinage statute) and Sec. 1200 (separate coach law); Ga. Laws, 1927, p. 272; Ga. Code (Michie Supp.) 1928, Sec. 2177; N. C. Gen. Stat. 1943, Sec. 115-2 (separate school law); Tenn. Code (Michie) 1938, Sec. 8396; Va. Code (Michie), 1942, Sec. 67.

[40] Okla. Const., Art. XXIII, Sec. 11; Art. XIII, Sec. 3; 43 Okla. Stat. Ann. 12 (inter-marriage law); 70 Okla. Stat. Ann. 452 (separate school law); 13 Okla. Stat. Ann. 183 (separate coach law); Tex. Rev. Civ. Stat. (Vernon), 1936, Art. 2900 (separate school law); Art. 6417 (separate coach law); Art. 4607 (inter-marriage law).

[41] Md. Code (Flack), 1939, Art. 27, Sec. 445 (intermarriage); N. C. Const., Art. XIV, Sec. 8 (marriage); N. C. Gen. Stat., 1943, Sec. 51-3 and 14-181 (marriage law); Tenn. Const., Art. XI, Sec. 14 (miscegenation); Tenn. Code (Michie), 1938, Sec. 8409 (miscegenation); Tex. Pen. Code (Vernon), 1936, Sec. 493 (miscegenation).

[42] Fla. Const., Art. XVI, Sec. 24 (marriage).

[43] Ore. Comp. Laws, 1940, Sec. 23-1010 (intermarriage).

[44] Fla. Stats., 1941, Sec. 1.01 (6); Ind. Stat. (Burns), 1933, Sec. 44-104 (intermarriage); Miss. Const., Sec. 263, Miss. Code, 1942, Sec. 459 (intermarriage); Mo. Rev. Stat. 1939, Sec. 4651 (intermarriage); N. D. Rev. Code Secs. 14-0304 and 14-0305 (intermarriage); Ore. Comp. Laws, 1940, Sec. 23-1010 (intermarriage); S. C. Const., Art. III, Sec. 33 (intermarriage).

general statute defining the terms, only three have been found wherein the legislative definition is specifically applicable to the transportation segregation laws.[45] Assuming that the definition in an act covering another field of activity may be used as a pointer to show the general meaning of the terms in that jurisdiction, this course has not always been followed.[46] Besides, in some instances, two conflicting definitions are to be found in the law of a single state,[47] in each of which instances the applicable criterion as to transportation segregation is speculative. Since one carrier may follow one rule, and another carrier the other, and a third carrier a third rule with equal justification in the light of the ambiguous character of the law, the harmonious flow of interstate traffic can never be assured.

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[45] Arkansas, Oklahoma, Texas. See ante, footnotes 39, 40. See also *Lee* v. *New Orleans G. N. Ry.*, 125 La. 236, 51 S. 182.

[46] Compare *Tucker* v. *Blease*, 97 S. C. 303, 81 S. E. 668 with *Moreau* v. *Grandich*, 114 Miss. 560, 75 S. 434.

[47] Alabama: The Constitution, Sec. 102, formerly prohibited marriages of whites and persons of Negro blood no matter how remote the strain, while the marriage law (Code, 1923, Sec. 5001) only prohibited marriages of whites with persons of Negro blood to the third generation inclusive. This conflict was not removed until 1927 by Acts, 1927, p. 219.

Tennessee: Two statutes define the term "Negro" or "a person of color" as including every person who has any Negro blood in his veins (footnote 39) while the constitutional provision and the statute forbidding interracial marriages (footnote 41) only prohibit the union of whites and persons who have Negro blood to the third generation inclusive.

Texas: The separate school law, separate coach law, and intermarriage law all define the terms as including any descendant from Negro ancestry (footnote 39), but the penal statute punishing miscegenation defines the term "Negro" as including only those persons who are of Negro blood to the third generation inclusive.

Kentucky: See footnote 48.

Florida: See footnote 48.

Furthermore, the definitions are subject to change at any time and have frequently been changed in the past.[48]

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[48] Alabama: Prior to 1927, the marriage law forbade marriages of whites with persons of Negro blood to the third generation inclusive. Ala. Code, 1923, Sec. 5001. This rule was changed in 1927 (footnote 47, *supra*) in order to conform the statute to the constitutional provision.

Florida: Two statutes define the word "Negro" in such manner as to embrace only those who have one-eighth or more Negro blood (footnote 44), but the constitution (footnote 42) prohibits interracial marriages to the "fourth generation inclusive."

Georgia: Until 1927, a person was classified as colored only if he had one-eighth or more Negro blood. Ga. Code (Michie), 1926, Sec. 2177. In that year the definition was changed to include any person having any ascertainable portion of Negro blood (see footnote 39).

Kentucky: This State has no statutory definition. It was early held that the old Virginia law providing that all persons having one-fourth or more Negro blood were to be classified as colored persons has been carried over into Kentucky at the time that State was carved out of territory belonging to Virginia, *Gentry* v. *McMinnis*, 33 Ky. 382. However, in *Mullins* v. *Belcher*, 142 Ky. 673, 143 S. W. 1151, it was held that a child having one-sixteenth Negro blood could not attend a white school, the court holding that any child having an appreciable amount of Negro blood is colored. Nevertheless, it has been decided that a person who looks white, has straight hair, is of a copper complexion, and has other characteristics of a white person is not a mulatto within the statute prohibiting the marriage of whites and Negroes or mulattos. *Theophanis* v. *Theophanis*, 244 Ky. 689, 57 S. W. (2d) 957.

Louisiana: It was first held in this state that all persons, including Indians, who were not of the white race were "colored." *Adelle* v. *Beaugard*, 1 Mart. 183. In 1910, it was held that anyone having an appreciable portion of Negro blood was a member of the colored race within the meaning of the segregation law. *Lee* v. *New Orleans G. N. Ry.*, 125 La. 236, 51 S. 182, *supra* footnote 45. In the same year, however, it was decided that an octoroon was not a member of the Negro or black race within the meaning of the concubinage law (La. Act, 1908, No. 87). *State* v. *Treadaway*, 126 La. 300, 52 S. 500. Shortly after the latter decision, the present concubinage statute was enacted substituting the word "colored" for "Negro." La. Acts, 1910, No. 206, La. Crim. Code (Dart), 1932, Art. 1128-1130. The effect of the change is yet to be determined.

(Continued on page 26)

Commerce is thus subjected to additional harassment at the hands of state legislatures whose every attempt at redefinition produces an increased burden upon passenger and carrier alike.

Involving, as it did, a statute forbidding segregation, this additional hazard was not drawn into issue in *Hall* v. *DeCuir*. Legislative definition of the terms in question is a later and comparatively modern development. However, the ever-increasing danger to commerce stemming from the unstable meaning of a vital factor in the general segregation plan adds mightily to the conclusion there reached.

B. The Racial Arrangment of Interstate Passengers Within a Vehicle in Transit Across a State Is Not a Matter of Substantial Local Concern

The burden of the statute here upon interstate commerce as hereinbefore elaborated is to be contrasted with the unsubstantial character of the state's claim of interest in the subject matter. We are concerned here merely with persons in transit through a state in a vehicle. Such persons are in no sense integrated into the local community. Their mere passage through the state does not menace any legitimate local interests. It is to be remembered that the peace and good order of the passengers does not make the statute inoperative. There is no reason to apprehend that the normal power of the state to enact and enforce criminal

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(Continued from page 25)

North Carolina: On the issue of what children of mixed blood, if any, should be permitted to attend white schools, it was held in *Hare* v. *Board of Education*, 113 N. C. 10, 18 S. E. 55, that the definition employed in the marriage law would be determinative. This was changed in 1903 by a statute providing that no child with Negro blood in his veins should attend a white school. N. C. Pub. Laws, 1903, Ch. 435, Sec. 22; N. C. Gen. Stats., 1943, Sec. 115-20.

Virginia: Va. Code, 1887, Sec. 49, provided that those who had one-fourth or more Negro blood were to be considered colored. This was changed in 1910 (Acts, 1910, p. 581) to read one-sixteenth or more. It was again changed in 1930 by Acts, 1930, p. 97, to its present form. See footnote 39. Virginia also has a race registration act. Va. Code, 1942 (Michie) Sec. 5099a.

laws concerning breaches of the peace is inadequate to control the behavior of travelers. Indeed the very tendency of enforced rearrangement of passengers as they travel from state to state is to create disorder and dissension.

In this connection it is particularly noteworthy that in Virginia itself and throughout the southern states where segregation statutes are in force so many situations are excepted from their operation as to make clear that there is no pressing need for them.

The Virginia statute requiring segregation in railroad coaches expressly exempts sleeping cars and chair cars.[49] Thus on a single train some Negroes are segregated and others are not. The Virginia statutes are silent concerning any racial arrangements on dining cars. The entire field of transportation by air is free of racial regulation.

Exceptions in other states are even more striking. The very group of persons now under discussion, those traveling in interstate commerce, is beyond the reach of state segregation laws in most southern states either by specific statutory exclusion or judicial construction.[50] There is no evidence that domestic order or well being has suffered thereby.

The exemption of first-class passengers from segregation is of frequent occurrence.[51] In Texas those riding on excursion trains need not be segregated.[52] Thus, neither those occupying the most expensive accommodations nor the cheapest have required segregation to preserve local tranquility.

Provincial notions thus capriciously applied cannot be founded on any basic local need. Their imposition upon interstate commerce is wholly without justification.

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[49] Va. Code (Michie), 1942, Sec. 3968.

[50] See notes 13 and 14 *supra*, p. 12.

[51] Md. Code (Flack) 1939, Art. 27, Sec. 510; N. C. Gen. Stats. 1943, Sec. 60-94; Texas Rev. Civ. Stats. (Vernon, 1936), Art. 6417, 4477; Virginia Code (Michie), 3928, 1942.

[52] See note 35.

Conclusion

Hall v. *DeCuir* was decided seventy years ago, and many of the cases following it are also precedents of past generations. Today, commerce is vastly increased. It has far greater need than ever before for freedom from obstacles bred of provincialism. Moreover, *Hall* v. *DeCuir* was decided when the Civil War and the racial antagonisms attendant to it were fresh in the minds and emotions of men. Even then this Court was quite sure that the nation to the exclusion of the states, must have control of this aspect of interstate travel. Today we are just emerging from a war in which all of the people of the United States were joined in a death struggle against the apostles of racism. We have already recognized by solemn subscription to the Charter of the United Nations, particularly Articles One and Fifty Five thereof, our duty, along with our neighbors, to eschew racism in our national life and to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." How much clearer, therefore, must it be today, than it was in 1877, that the national business of interstate commerce is not to be disfigured by disruptive local practices bred of racial notions alien to our national ideals, and to the solemn undertakings of the community of civilized nations as well.

It is respectfully submitted that the judgment appealed from should be reversed.

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APPENDIX A

Michie—Virginia Code

4097z. Segregation of White and Colored Passengers.—

All passenger motor vehicle carriers, operating under the provisions of chapter one hundred and sixty-one (a) of the Code of Virginia, shall separate the white and colored passengers in their motor busses and set apart and designate in each bus or other vehicle, a portion thereof, or certain seats therein, to be occupied by white passengers, and a portion thereof or certain seats therein, to be occupied by colored passengers, and such company or corporation, person or persons that shall fail, refuse or neglect to comply with the provisions of this section shall be guilty of a misdemeanor, and upon indictment and conviction, shall be fined not less than fifty dollars nor more than two hundred and fifty dollars for each offense. (1930, p. 343.)

4097aa. Discrimination Prohibited.—

The said companies, corporations or persons so operating motor vehicle carriers shall make no difference or discrimination in the quality or convenience of the accommodations provided for the two races under the provision of the preceding section. (1930, p. 343.)

4097bb. Driver May Change Designation of Seats.—

The driver, operator or other person in charge of any motor vehicle above mentioned, shall have the right, and he is hereby directed and required at any time when it may be necessary or proper for the comfort and convenience of passengers so to do, to change the designation so as to increase or decrease the amount of space or seats set apart for either race; but no contiguous seats on the same bench

shall be occupied by white and colored passengers at the same time; and said driver, operator or other person in charge of the vehicle may require any passenger to change his or her seat as it may be necessary or proper; the driver, operator or other person in charge of said vehicle who shall fail or refuse to carry out the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars for each offense. (1930, p. 343.)

4097cc. Drivers are Special Policemen With Powers of Conservators of the Peace.—

Each driver, operator or person in charge of any vehicle, in the employment of any company operating the same, while actively engaged in the operation of said vehicle, shall be a special policeman and have all of the powers of conservators of the peace in the enforcement of the provisions of this act, and in the discharge of his duty as special policeman, in the enforcement of order upon said vehicles; and such driver, operator or person in charge of said vehicle shall likewise have the powers of conservators of the peace and of special policemen while in pursuit of persons for disorder upon said vehicles, for violating the provisions of this act, and until such persons as may be arrested by him shall have been placed in confinement or delivered over to the custody of some other conservator of the peace or police officer; and, acting in good faith, he shall be for the purposes of this chapter, the judge of the race of each passenger whenever such passenger has failed to disclose his or her race. (1930, p. 344.)

4097dd. VIOLATION BY PASSENGERS; MISDEMEANOR; EJECTION.—

All persons who fail while on any motor vehicle carrier, to take and occupy the seat or seats or other space assigned to them by the driver, operator or other person in charge of such vehicle, or by the person whose duty it is to take up tickets or collect fares from passengers therein, or who fail to obey the directions of any such driver, operator or other person in charge, as aforesaid, to change their seats from time to time as occasions require, pursuant to any lawful rule, regulation or custom in force by such lines as to assigning separate seats or other space to white and colored persons, respectively, having been first advised of the fact of such regulation and requested to conform thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars for each offense. Furthermore, such persons may be ejected from such vehicle by any driver, operator or person in charge of said vehicle, or by any police officer or other conservator of the peace; and in case such persons ejected shall have paid their fares upon said vehicle, they shall not be entitled to the return of any part of same. For the refusal of any such passenger to abide by the request of the person in charge of said vehicle as aforesaid, and his consequent ejection from said vehicle, neither the driver, operator, person in charge, owner, manager nor bus company operating said vehicle shall be liable for damages in any court. (1930, p. 344.)